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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re K.W., a Person Coming Under the Juvenile  
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.W.,

Defendant and Appellant.

F051538

(Super. Ct. No. JW093119-01)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Peter A. Warmerdam, Referee.

Torres & Torres, Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, J. Robert Jibson and Peter H. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

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\*Before Harris, Acting P.J., Wiseman, J., and Cornell, J.

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Following a contested jurisdiction hearing, the juvenile court found true the allegations that appellant K.W., a minor, committed second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)), a felony, and vandalism causing less than \$400 damage (Pen. Code, § 594, subd. (b)(2)(A)), a misdemeanor. Following the subsequent disposition hearing, the court adjudged appellant a ward of the court and placed him on probation, with various terms and conditions, including that he not possess any weapons or drugs or associate with any person in possession of any weapons or drugs. On appeal, appellant argues that (1) these conditions are invalid, and (2) another probation condition imposed by the court, requiring appellant to submit to searches by law enforcement officers, is not accurately set forth in the minute order. The People concede each of these points. We will modify the challenged conditions and direct the court to prepare an amended minute order that so indicates and that conforms to the court's oral pronouncement of conditions of probation.

### **FACTUAL AND PROCEDURAL HISTORIES**

#### ***Facts***

Viewed in the light most favorable to the judgment in accordance with the customary rule governing appellate review (*People v. Johnson* (1980) 26 Cal.3d 557, 576-578), the evidence established the following: At approximately 4:00 p.m. on September 17, 2006, appellant rode his bicycle into the Alfarooq Market in Bakersfield where Nashwan Alrowhami was working behind the counter. Alrowhami told appellant to leave the store, but appellant refused and swore at Alrowhami. A further argument ensued when appellant tried to buy three cigars for \$0.75, and Alrowhami asked appellant for identification and told him the price of the cigars was \$1. Shortly thereafter, appellant threatened to go home, get a gun, return and kill Alrowhami. At some point, appellant grabbed the cigars, which Alrowhami had placed on the counter, and left the

store. Before leaving the store, appellant broke a glass door with the handlebars of his bicycle.

### ***Procedural History***

The terms and conditions of probation imposed by the court at the disposition hearing included the following: “[Appellant is] not to possess a weapon of any type, nor possess, use or consume any drug or intoxicant, nor associate or initiate contact with anyone he knows to be involved with or in possession of the same.” We refer to these conditions of probation collectively as the possession and association conditions.

The court also imposed the following condition of probation: “[Appellant] shall without prior consent or notice of intent to search, submit to a search of his person or property for stolen property, weapons of any type, drugs or intoxicants or evidence of their use, including submission to drug and alcohol use detection tests upon the request of his probation officer at any time and upon the request of any law enforcement officer who *suspects* that he is in possession of any such items or evidence.” (*Italics added.*) We refer to this condition of probation as the search condition.

As set forth in the minute order, the search condition is broken up into three paragraphs and omits the requirement that an officer suspect appellant of being in possession of the items he is forbidden to possess: “The minor shall, without prior consent or notice of intent to search, submit to a search of his/her person, vehicle, possessions, or residence for weapon of any type upon the request of a probation officer or a law enforcement officer at [any time], day or night, without the necessity of a search warrant or probable cause. [¶] The minor shall, without prior consent or notice of intent to search, submit to a search of his/her person, vehicle, possessions, or residence for stolen property upon the request of a probation officer or a law enforcement officer at [any time], day or night, without the necessity of a search warrant or probable cause. [¶] The minor shall, without prior consent or notice of intent to search, submit to a search of his/her person, vehicle, possessions, or residence for drugs, intoxicants, or inhalants upon

the request of a probation officer or a law enforcement officer at [any time], day or night, without the necessity of a search warrant or probable cause.” (Unnecessary capitalization omitted.)

### **DISCUSSION**

#### ***I. Possession and association conditions***

Appellant contends, and the People concede, the juvenile court abused its discretion in imposing the possession and association conditions.

A juvenile court is vested with broad discretion to select appropriate probation conditions. The court may impose any reasonable condition that is “fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).) As in adult criminal cases, a condition of probation that forbids or requires noncriminal conduct is valid only if it is reasonably related to the crime of which the minor was convicted or to future criminality. (*People v. Lent* (1975) 15 Cal.3d 481, 486; *In re Josh W.* (1997) 55 Cal.App.4th 1, 6.)

As the parties agree, the term “weapon” is broad enough to include many innocent household objects, and the term “drug” could include many legal substances, including prescription medicines. For these reasons, the challenged conditions of probation, because they forbid appellant from (1) possessing any drug or weapon and (2) associating with persons appellant knows to be in possession of such items, forbid noncriminal conduct and are not reasonably related to either the instant offenses or future criminality. Therefore, the possession and association conditions are invalid.

The People assert, and appellant does not dispute, that the infirmity in the challenged conditions can be cured by substituting for them the following: “The minor shall not possess any illegal weapons or associate with or initiate contact with anyone known to the minor to be in unlawful possession of a weapon. The minor shall not possess, use, or consume any illegal drugs, intoxicant, or inhalant or associate with anyone known to the minor to use illegal drugs, intoxicant, or inhalant.” We agree. We

will modify the possession and association conditions accordingly and direct the court to amend its minute order to reflect these modifications.

## ***II. Modification of minute order***

Appellant contends, and the People concede, the court's minute order does not accurately state the search condition imposed by the juvenile court at the disposition hearing. Specifically, as indicated above, the minute order omits the qualification, stated by the court in its oral pronouncement of the search condition, that any law enforcement officer conducting a search pursuant to that condition must reasonably suspect that appellant is in possession of the enumerated prohibited items. As the parties agree, the search condition should be modified to conform to the court's oral pronouncement. (*People v. Mesa* (1975) 14 Cal.3d 466, 471 [discrepancy between judgment as orally pronounced and as entered in minutes presumably the result of clerical error]; *People v. Mitchell* (2001) 26 Cal.4th 181, 185 [appellate court has inherent power to correct clerical error at any time].) Accordingly, we will order that the minute order be amended to read as follows: "The minor shall, without prior consent or notice of intent to search, submit to a search of his person, vehicle, possessions, or residence for weapons, stolen property or illegal drugs, intoxicants or inhalants, upon the request of a probation officer or a law enforcement officer who reasonably suspects that the minor is in possession of any such items or evidence."

## **DISPOSITION**

The possession and association conditions are modified as set forth in this opinion. The juvenile court shall issue an amended minute order as directed in this opinion. In all other respects, the judgment is affirmed.